



PCA/CDPA/FDP APPLICATION ACCEPTED: April 22, 2015
PLANNING COMMISSION: February 4, 2016
BOARD OF SUPERVISORS: February 16, 2016

County of Fairfax, Virginia

January 28, 2016

STAFF REPORT ADDENDUM

PCA/CDPA 2011-PR-023/FDP 2011-PR-023-4

PROVIDENCE DISTRICT

APPLICANT: Cityline Partners LLC and Renaissance Centro Tysons LLC

PRESENT ZONING: PTC

PARCEL(S): 29-4 ((7)) 2A

ACREAGE: 2.0

FAR/DENSITY: 3.09 over entire original RZ site, 2.33 for FDP site

PLAN MAP: Transit Station Mixed Use

PROPOSAL: Replace a previously approved hotel with residential use on Block D.

STAFF RECOMMENDATIONS:

Staff recommends denial of PCA/CDPA 2011-PR-023.

Staff recommends denial of FDP 2011-PR-023-4.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

Suzanne Wright

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Supervisors.

The approval of this rezoning does not interfere with, abrogate or annul any easement, covenants, or other agreements between parties, as they may apply to the property subject to this application.

For information, contact the Zoning Evaluation Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035-5505, (703) 324-1290.

X:\DPZ\Tysons-Core\CASES\Arbor Row PCA 2011-PR-23\Staff Report\01--Cover Sheet.doc



Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 48 hours advance notice. For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

DESCRIPTION OF THE APPLICATION

As described in the staff report published last week, these applications, a partial Proffer Condition Amendment with Conceptual Development Plan Amendment and Final Development Plan (PCA/CDPA/FDP), have been submitted to modify the plans and proffers accepted with the Arbor Row development (RZ 2011-PR-023). Specifically, these applications seek to permit the replacement of the hotel approved on Block D with a residential building. The original approval depicted the hotel building facing Westpark Drive with a 5-level parking structure to the rear of the building which was to be built into the existing grade. The 200-foot tall hotel included up to 250 rooms with ground-floor retail. In place of the 170,000 square foot (SF) hotel and retail building, the applicant proposes a 202,794 SF residential building with up to 140 residential units in a 300-foot tall (25 stories) building. The staff report also discussed alternatives to these maximums under certain circumstances relating to the provision of workforce housing and the attendant increases in intensity.

ANALYSIS

The central unresolved issue in the staff report was the proffered strategy for meeting the Comprehensive Plan and Board policy guidance on workforce housing. Staff raised several concerns regarding the submitted proffers and the applicant has submitted revised proffers, dated January 13, 2016, which are attached here.

The key changes are summarized here as follows:

- Proffer 50 has been revised in response to staff comments that the monetary contribution for the provision of athletic field should be provided at the first, as opposed to the final, Residential Use Permit (RUP).
- The applicant has also modified sections of Proffer 92.2, the proffer that describes the two for-sale options relating to workforce housing on the site. Proffer 92.2 (A) has been modified to address concerns raised in the staff report regarding the appropriate mix of unit types to be provided in the building under the first option. Specifically, the proffers commit to a specific mix of unit sizes. The proffer provides that:

The For-Sale WDUs shall be comprised of up to 50% efficiencies, approximately 40% one bedroom units, and a minimum of 10% two bedroom or one bedroom/den units-(e.g. a minimum of 2 units).

- Proffer 92.2 (B) has been modified to provide additional detail, examples and a minimum commitment of any cash contribution. The applicant has

provided examples of what the initial contribution (paid over the two installment plan) might be (based on hypothetical sales prices) and has provided a commitment that any monetary contribution would result in a contribution of at least \$1,000,000.

- The applicant has also modified the proffer which permits the applicant to opt in to any new workforce housing policy adopted by the Board to clarify that it includes the ability to opt in to any existing policy. (Since the existing WDU policy would be the default governing policy, it is not clear to staff what this proffer achieves.)

The proffer changes represent improvements as they relate to the unit mix in the first option, which provides workforce housing units within the proposed residential building. In addition, the proffers now provide a minimum contribution for the second option, which is the option for a monetary contribution in lieu of workforce units (but linked to bonus intensity of 16 percent). However, for the reasons stated in the staff report, staff does not support the second option and, therefore, the staff recommendation remains unchanged.

This staff report addendum also includes a memorandum dated January 22, 2016 from the Fairfax County Department of Housing and Community Development discussing the Workforce Housing proffers. It should be noted that this memo analyzes the December 30, 2015, proffers.

RECOMMENDATION

Staff recommends denial of PCA 2011-PR-023, with CDPA 2011-PR-023.

Staff recommends denial of FDP 2011-PR-023-4.

ATTACHMENTS

1. Revised proffers dated January 12, 2016.
2. Staff Memorandum dated January 27, 2016 from the Fairfax County Department of Housing and Community Development

ARBOR ROW BLOCK D
PCA 2011-PR-023
~~DRAFT~~ PROFFER STATEMENT
July 30, 2015
October 5, 2015
December 30, 2015
January 12, 2016

Proffered Condition Amendment Application PCA 2011-PR-023 (the "**Application**") has been filed by and on behalf of (i) Cityline Partners LLC, as Applicant, (ii) Grayson 7913 Westpark LLC and Campbell-Scott Westpark LLC, as Owners, and (iii) Renaissance Centro Tysons LLC, as Contract Purchaser, on approximately 2.0 acres of land identified as Fairfax County Tax Map Parcel 29-4-((7))-2A and known as "Block D" of the Arbor Row development (the "**Block D Subject Property**"). The Block D Subject Property consists solely of Block D, which is located south of Westpark Drive and west of Jones Branch Drive Extended and zoned to the PTC-Planned Tysons Corner Urban ("PTC") District.

Pursuant to Sect. 15.2-2303(A) of the Code of Virginia (1950), as amended, and Sect. 18-204 of the Zoning Ordinance of Fairfax County (1978), as amended, the Applicant, Owners and Contract Purchaser, on behalf of themselves and their respective successors and/or assigns (referred to hereafter, both collectively and, where appropriate, individually as the "**Applicant**"), hereby proffer that redevelopment of the Block D Subject Property shall be in accordance with the following conditions (the "**Proffers**") if, and only if, the Application, as proposed by the Applicant, is granted by the Board of Supervisors (the "**Board**") allowing replacement of an approved hotel use with residential use. If the Application is granted by the Board, certain Proffers as identified below shall replace and supersede several of the existing proffered conditions applicable to the Block D Subject Property. Density attributable to the Block D Subject Property is not the result of transferring square footage from any other Arbor Row Blocks. All other Proffers accepted previously in RZ 2011-PR-023 for Blocks A, B, C, D, E and F and dated October 26, 2012 (the "**Existing Proffers**" attached in **Exhibit A**) shall remain in effect and be unchanged, except as noted herein. In the event this Application is denied by the Board, these Proffers shall immediately be null and void and all Existing Proffers accepted in RZ 2011-PR-023 shall remain in full force and effect.

The following Proffer changes and additions pertain to the Block D Subject Property only and shall modify the Existing Proffers with respect to the Block D Subject Property, as described below.

GENERAL

Existing Proffer 1 amended as to the Block D Subject Property as follows:

1. Substantial Conformance. Subject to the Proffers and the provisions of Sect. 6-500, Sect. 16-400 and Sect. 18-204 of the Zoning Ordinance of Fairfax County, as amended (the "**Zoning Ordinance**"), the Block D Subject Property shall be developed in substantial conformance with the proffered elements of the Arbor Row Conceptual Development Plan Amendment ("**CDPA**") dated March 30, 2015 as revised through December 30, 2015, prepared by

Bowman Consulting Group, Ltd., WDG Architecture, PLLC, and Parker Rodriguez, Inc., and as further modified by these Proffers. The previously-approved Conceptual Development Plan dated April 26, 2011, as revised through October 5, 2012 and prepared by Bowman Consulting Group, Ltd., WDG Architecture, PLLC, Shalom Baranes Associates, P.C., KGD Architecture and Parker Rodriguez, Inc. ("**CDP**") shall remain unchanged for Blocks A, B, C, E and F. In Existing Proffers being reaffirmed herein, references to the CDP shall also pertain to the CDPA on the Block D Subject Property.

Reaffirm Existing Proffers 2, 3, 4, 5, 6 and 7, which shall remain unchanged.

Existing Proffer 8 amended as to the Block D Subject Property as follows:

8. Fire Marshal. The Applicant has coordinated the layout depicted on the CDPA and the FDP for the Block D Subject Property with the Fire Marshal. Further changes to these plans shall be permitted in response to the review of site plans by the Fire Marshal, including adjustments to the streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, provided such modifications are made in consultation with the Fairfax County Department of Planning and Zoning ("**DPZ**"), and the Fairfax County Department of Transportation ("**FCDOT**") and the Office of Community Revitalization ("**OCR**") and are in substantial conformance with the intent of the CDPA, FDP and these Proffers.

PERMITTED USES AND INTENSITY/DENSITY

Existing Proffer 9 amended as to the Block D Subject Property as follows:

9. Maximum Gross Floor Area ("**GFA**"). The maximum GFA permitted on the Block D Subject Property is 202,794 square feet, which includes 163,972 square feet of base multifamily residential density, a permitted residential bonus density of 32,794 square feet and up to 6,028 square feet retail/ services uses in one residential mixed use building, as set forth in the tabulations and notes in Table 1 on Sheet C2.1 of the CDPA; provided that in the event the Applicant elects to pursue the WDU alternative described in Proffer 92.2.B, the maximum GFA permitted on the Block D Subject Property will be 196,235 square feet, which includes 163,972 square feet of base multifamily residential density, a permitted residential bonus density of 26,235 square feet and up to 6,028 square feet retail/services uses in one residential mixed use building, as set forth in the tabulations and notes in Table 5 on Sheet C2.1 of the CDPA.

Reaffirm Existing Proffer 10, which shall remain unchanged.

Existing Proffer 11 amended as to the Block D Subject Property as follows:

11. Residential Dwelling Units in Block D. Block D shall contain a minimum of 110 residential dwelling units and a maximum of 140 residential dwelling units. In the event that any

of the retail/service uses in Block D are converted to "Live-Work Units" (as set forth in Proffer 14), this maximum shall increase to 150 residential dwelling units.

Existing Proffer 12 does not relate to the Block D Subject Property.

Reaffirm Existing Proffers 13-17 which shall remain unchanged.

ARCHITECTURAL DESIGN

Reaffirm Existing Proffers 18 – 24, which shall remain unchanged.

GREEN BUILDING AND SUSTAINABLE ENERGY PRACTICES

Reaffirm Existing Proffer 25, which shall remain unchanged.

Existing Proffers 26 and 27 do not relate to the Block D Subject Property.

Existing Proffers 28 and 29 amended as to residential use on the Block D Subject Property as follows:

28. Block D Residential Green Building Practices. As set forth in Proffer 25, all references in these Proffers to USGBC and LEED shall apply equally to such other alternative green building certifying entities selected by the Block D Subject Property owner, including the 2012 National Green Building Standard (NGBS) using the ENERGY STAR path for energy performance.. A LEED-AP professional shall be included as a member of the design team for Block D. The LEED-AP shall work with the design team to incorporate design elements under a version of the LEED-NC rating system available at the time of such Applicant's registration into the residential building to be constructed on Block D. At the time of site plan submission, documentation shall be provided to the EDRB demonstrating compliance with the commitment to engage such a professional. In addition, prior to site plan approval for these respective Blocks, the Chief of the EDRB shall be designated as a team member in the USGBC's LEED online system with respect to such building. This team member will have privileges to review the project status and monitor the progress of all LEED-related documents submitted to the Green Building Certification Institute by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

As part of site plan and building plan submission, a list of specific credits within a version of the LEED-NC rating system available at the time of registration (or such other rating system as may be applicable pursuant to Proffer 25), which is anticipated to be attained for such residential building shall be provided. Except as otherwise provided below as an alternative, the LEED-AP, who is a professional engineer or licensed architect, will provide certification statements at the time of site plan review and building plan review, confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-NC certification for the subject

residential building. Certification may be pursued pursuant to this Proffer or the alternative provided below.

Prior to the building plan approval, a "Green Building Escrow," in the form of cash or a letter of credit from a financial institution acceptable to DPWES as defined in the PFM shall be posted in the amount of \$2.00 per square foot of GFA for the building. This Green Building Escrow will be in addition to, and separate from, other bond or escrow requirements and shall be released upon demonstration of attainment of LEED-NC certification, by the USGBC under the project's registered version of the LEED-NC rating system or other LEED rating system determined by the USGBC to be applicable. The provision to the EDRB of documentation from the USGBC that the residential building has attained LEED-NC certification shall be sufficient to satisfy this commitment. At the time LEED-NC certification is demonstrated to the Environmental Review Branch, the escrowed funds shall be released and returned to the Applicant who posted such Green Building Escrow, as applicable.

If prior to bond extension, reduction or final bond release for the building site, whichever occurs first, the Applicant provides to EDRB documentation demonstrating that LEED-NC certification for the building has not been attained but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED-NC certification, 50% of the green building escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of county environmental initiatives. If the certification is still in progress at the time of application for the bond extension or reduction, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or extension. However, the documentation must be provided prior to the final bond release for the building site.

If prior to the bond extension, reduction or final bond release for the building site, whichever occurs first, the Applicant fails to provide documentation to EDRB demonstrating attainment of LEED-NC certification or demonstrating that the building has fallen short of LEED-NC certification by three (3) points or less, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives. If the certification is still in progress at the time of application for bond extension or reduction, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for the building site.

If documentation fails to be provided from the USGBC demonstrating, to the satisfaction of the Environmental Review Branch, that USGBC completion of the review of the LEED-NC certification application has been delayed through no fault of the Applicant, the proffered time frame may be extended as determined appropriate by the Zoning Administrator, and no release of escrowed funds shall be made during the extension.

29. Block D Residential Green Building Alternative. As an alternative to the actions outlined above, a certification level higher than LEED certification may be pursued, in which case a LEED-AP will provide certification statements at the time of site plan and building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED-NC Silver certification.

Prior to building plan approval for the building to be constructed, documentation shall be submitted to the EDRB regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED-NC Silver certification. Under this alternative, a "Green Building Escrow" shall not be required unless the above referenced documentation that the building is anticipated to attain LEED-NC Silver certification fails to be provided.

Existing Proffers 30 – 31 do not relate to the Block D Subject Property.

Reaffirm Existing Proffer 32, which shall remain unchanged.

URBAN SITE DESIGN AND LANDSCAPING

Reaffirm Existing Proffers 33– 37, which shall remain unchanged.

STREETSCAPES

Reaffirm Existing Proffers 38 – 49, which shall remain unchanged.

OFF-SITE PUBLIC FACILITIES AND ATHLETIC FIELDS

Existing Proffer 50 amended as to the Block D Subject Property to add the following:

- F. Athletic Field Contribution. Conversion of the Block D Subject Property from hotel to residential use generates an anticipated athletic field requirement of 1/100 of a full-size athletic field for this Application. To meet this anticipated requirement, the Applicant shall contribute \$2.38 per square foot for the net increase in new, additional GFA associated with new residential development on the Block D Subject Property (estimated total contribution of \$79,968.00). This contribution shall be payable prior to issuance of the ~~final~~first RUP for development on the Block D Subject Property, made to the Fairfax County Park Authority and used solely for the purchase of land and/or construction of athletic field facilities within Tysons.

Reaffirm Existing Proffers 51 – 52, which shall remain unchanged.

Existing Proffer 53 amended as to the Block D Subject Property:

53. Public Schools Cash Contribution. In addition to the off-site dedication of the Park/School/Athletic Fields Parcel, prior to the issuance of the first RUP for the building in Block D, the amount of \$11,749.00 per student for students projected to be generated by this redevelopment shall be contributed to the Board for transfer to Fairfax County Public Schools ("FCPS") to be utilized for capital improvements and capacity enhancements at the schools that students generated by this residential building will attend. This contribution shall be based on student yield ratios of 0.056, 0.016 and 0.028 per unit for elementary, middle and high school, respectively. Such contribution shall be made at the time of issuance of the first RUP for the residential building.

Reaffirm Existing Proffer 54, which shall remain unchanged.

ON-SITE PARKS AND ACTIVE RECREATION FACILITIES

Existing Proffers 55, 56 and 57 amended as to the Block D Subject Property as follows:

55. Publicly-Accessible Parks by Block. Parks, plazas, terraces, trails and open space shown on the CDP for Blocks A, B, C, E and F and on the CDPA for the Block D Subject Property, while retained in private ownership, shall be subject to public access easements which shall reserve to each Applicant, as applicable, the right, as to its respective Block, to reasonably restrict access for limited times for special events, security, maintenance and repairs and/or safety purposes. Each Applicant may establish reasonable rules and regulations for the public areas on its respective Block provided, however, that such public areas generally are open on a daily basis from dawn until dusk (10:00 p.m. if lighted). At the time of site plan submission for the first building in Block C, the Applicant shall enter into discussions with FCPA regarding opportunities for public programming within the large Urban Park within Block C. Any such agreement between the Applicant and FCPA shall be memorialized in a "Memorandum of Understanding." Special amenity features generally described below shall be depicted on the FDP for Block C, and shall be designed to enhance and complement land uses and may include both hardscape and softscape elements generally as depicted on the CDP. Parks and other publicly-accessible recreation areas shall be provided on each respective Block as generally shown on the Phasing Sheets and Urban Parks Plan on the CDP and CDPA for Block D Subject Property at the time of issuance of the first RUP or Non-RUP for new construction on that Block and as further described below, with more specific details provided on the FDP for each Block:

(Paragraphs A, B, C and D do not relate to the Block D Subject Property.)

- E. Block D. As shown conceptually on the CDPA, one publicly-accessible "Pocket Park" ("A" type) that is approximately 16,500 square feet in size shall be provided prior to issuance of the first RUP or Non-RUP for the Block D Subject Property. This pocket park shall be designed to create an intimate passive park that includes

seating, special plantings, lawn space and special paving activating the space and linking it to the adjacent residential building.

56. Urban Parks Tabulations. The publicly-accessible open space tabulations set forth on the CDP for Blocks A, B, C, E and F, and on the CDPA for the Block D Subject Property, shall be achieved when redevelopment of the entirety of the Arbor Row development is complete, in accordance with Par. 2 of Sect. 16-403 of the Zoning Ordinance.

57. Private Active Recreation Facilities. Pursuant to Par. 2 of Sect. 6-508 and of Sect. 16-404 of the Zoning Ordinance, at the time of site plan approval, a minimum of \$1,800.00 per market-rate and workforce residential dwelling unit shall be provided for each residential building within Block A, Block D and Block E toward construction of developed on-site recreation facilities (privately and publicly-accessible) for each respective building. The balance of any funds not expended for the applicable residential building, if any as determined by DPWES, shall be contributed or may be escrowed, prior to issuance of the RUP for the final unit in such building, for provision of future on-site recreation facilities (private and publicly accessible) within Block C, and, if no such facilities are identified, then such residual funds shall be contributed to the FCPA for the provision of recreation facilities within Tysons Corner. The specific facilities and amenities noted below (which are separate from and in addition to the required provision of publicly accessible park space) shall be provided within each residential Block and may be shared between two or more residential buildings for the use and enjoyment of the residents of those buildings, as determined at the time of FDP approval. Private recreation facilities shall include, but not be limited to:

- A. Private exterior courtyard areas, which may be located on the top deck of the parking garages and/or residential buildings or in open areas and may include pool facilities, informal seating areas, landscaping, hardscape areas and/or passive recreation areas; and
- B. An interior fitness center furnished with exercise equipment that may include, but is not limited to, stationary bikes, treadmills, weight machines and free weights, but not necessarily staffed.

PEDESTRIAN CIRCULATION

Reaffirm Existing Proffer 58, which shall remain unchanged.

TRANSPORTATION

Reaffirm Existing Proffers 59 – 78, which shall remain unchanged.

TRANSPORTATION DEMAND MANAGEMENT ("TDM")

Existing Proffer 79 amended as to the Block D Subject Property to delete references to "hotel" use as follows:

79. Transportation Demand Management for Retail Uses. As provided in the above Proffer, certain components of the TDM Plan are applicable to and will benefit the proposed Retail Uses on the Block D Subject Property. Therefore, the Applicant will provide an additional TDM program tailored to specifically serve the Retail Uses (the "Retail TDM Program"). In no event will penalties be assessed against any Retail Uses, which may be established on the Subject Property.

- A. Goals of the Retail TDM Program. Because tenants of the retail stores and their employees work hours that are atypical of the standard work day, these tenants and their employees do not necessarily travel to and from the Block D Subject Property during peak hours. Given this, the Retail TDM Program shall encourage retail tenants guests and the retail employees to utilize transit, carpools, walking, biking and other non-Single Occupancy Vehicle ("non-SOV") modes of transportation to travel to and from the Subject Property rather than focusing on the specific trip reductions during the weekday AM or PM peak hours.
- B. Components of the Retail TDM Program. The Retail TDM Program shall include, at a minimum, the components applicable to the Block D Subject Property that are described in this Proffer and the additional components provided below. These additional components may be subsequently amended by mutual agreement between the Applicant and FCDOT. All amendments to the components of the Retail TDM Program contained in this Proffer shall be approved by FCDOT and will not require a PCA. The Retail TDM Program components are further described in the TDM Plan.
- C. Employee/Tenant Meetings. The TPM shall hold, at a minimum, an annual TDM meeting with the Retail store tenants and Managers, and their respective employees, to review the available transit options, changes in transit service and other relevant transit-related topics. Based on these meetings, the TPM shall work with Fairfax County to consider changes to the relevant services, such as changes to bus schedules, if such changes would provide better service to the Block D Subject Property tenants and their employees.
- D. Regional TDM Programs. The TPM shall make information available to retail store tenants and the retail employees about regional TDM programs that promote alternative commuting options. This shall include information on vanpools, carpools, guaranteed ride home and other programs offered by organizations in the Washington, D.C. Metropolitan Area.

- E. Retail TDM Program Participation Outreach. The TPM shall endeavor in good faith to encourage participation by Retail store tenants in the Retail TDM Program, including the encouragement of a financial participation by such tenants through their direct offering of transit benefit programs and transit incentives to their employees. Actions taken by the TPM and property management in furtherance of this objective may include dissemination of information to, and solicitation of participation from, the tenant's in-store management and executives or officers at their headquarters offices, at appropriate intervals. The TPM shall include a report to the County with respect to the activities described in the TDM Proffer as part of the Annual Report to be filed with the County. This report shall include detailed accounts of the outreach efforts and the feedback and response from the tenants.

Reaffirm Existing Proffers 80 and 81, which shall remain unchanged.

BICYCLE FACILITIES

Reaffirm Existing Proffers 82 and 83, which shall remain unchanged.

PARKING

Existing Proffer 84 amended as to the Block D Subject Property as follows:

84. Parking Requirements. Parking on the Block D Subject Property shall be provided in accordance with the parking requirements for the PTC District set forth in Sect. 6-509 and Article 11 of the Zoning Ordinance, and as shown on the CDPA for Block D. Tandem and valet parking shall be permitted and, subject to Board approval, shall count toward parking requirements. Tandem parking spaces may be used for residential units with two cars and in office buildings where spaces are assigned by building management. The exact number of parking spaces to be provided for the Block D Subject Property shall be refined with approval of the FDP and determined at the time of site plan approval, provided that the parking actually constructed on the Block D Subject Property shall not reduce the maximum number of parking spaces shown in the tabulations on the CDP and CDPA for the other Blocks. If changes in the mix of uses or unit types result in parking greater than that anticipated on the CDPA, the additional parking spaces shall be accommodated within the proposed parking garages, so long as the maximum height and footprints of the parking garages do not increase from that shown on the CDPA. Parking at revised ratios may be provided, as may be permitted by a future amendment to the Zoning Ordinance. Optional use of revised ratios shall not require a PCA, CDPA or FDPA, provided there is no increase in the size or height of above-grade parking garages beyond minor adjustments to what is shown on the CDPA.

Reaffirm Existing Proffers 85 – 91, which shall remain unchanged.

WORKFORCE HOUSING

Existing Proffer 91 does not relate to the Block D Subject Property.

Existing Proffer 92 amended as to the Block D Subject Property for high-rise WDUs as follows:

92.1 Rental Workforce Dwelling Units. If Block D is developed and marketed as a rental building, rental housing units on Block D shall be provided within the residential building in accordance with the Board's Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010 (the "Adopted WDU Guidelines"). Rental Workforce Dwelling Units ("Rental WDUs") shall be provided such that the total number of Rental WDUs results in twenty percent (20%) of the total residential units constructed on Block D. The 20% applies to the total number of dwelling units to be constructed on the subject site, respectively; however, any units created with workforce housing bonus floor area shall be excluded from the 20% WDU calculation.

- A. The Rental WDUs generated by the residential building shall be provided within such building. Additionally, in the event that parking spaces are made available for lease to individual market rate dwelling units, at least one (1) parking space shall be made available for lease with each Rental WDU in Block D.
- B. Notwithstanding the foregoing, should the Board's policies related to WDUs in Tysons Corner be amended, the Applicant reserves the right, in its sole discretion as to its respective Block, to opt into the new policies, in part or in whole, without the need for a PCA or CDPA and, if an Applicant so opts into any such new policies, the provisions of this Proffer which relate to the new policies of the Board which the Applicant has elected to opt into shall no longer be effective. Furthermore, the Applicant reserves the right as to its respective Block to enter into a separate binding written agreement with the appropriate County agency as to the terms and conditions of the administration of the Rental WDUs. Such an agreement shall be on terms mutually acceptable to the Applicant and the County and may occur any time after the approval of this Application. Neither the Board nor the County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the Rental WDUs shall be administered solely in accordance with such agreement and the provisions of this Proffer as it applies to Rental WDUs shall become null and void. Such an agreement and any modifications thereto, or an appropriate memorandum thereof, shall be recorded in the land records of the County.

92.2 For-Sale Workforce Dwelling Units. If Block D is developed and marketed as a for-sale building, Workforce Dwelling Units ("WDUs") shall be provided in accordance with one of the two options described as follows:

- A. The first option is that For-Sale Workforce Dwelling Units ("For-Sale WDUs") shall be provided such that the total number of For-Sale WDUs results in twenty percent (20%) of the total residential units constructed on Block D. The 20% applies to the total number of dwelling units to be constructed on Block D, however, any units created with workforce housing bonus floor area shall be excluded from the 20% WDU calculation. The Applicant shall provide the required For-Sale WDUs generated by the residential building within such building, which shall be developed with a maximum of an additional 20% of GFA above the base development and a maximum building height of 300 feet as shown on the CDPA. The number of For-Sale WDUs provided may increase or decrease depending upon the total number of dwelling units constructed on Block D. Additionally, in the event that parking spaces are made available for sale or lease to individual market rate dwelling units, at least one (1) parking space shall be made available for sale or lease with each For-Sale WDU in Block D. The For-Sale WDUs located on Block D shall be provided in accordance with the following provisions:
- i. The For-Sale WDUs with respect to Block D only will be provided as follows: one-third (1/3) of the WDUs will be provided at the 70% AMI income tier, one-third (1/3) of the WDUs will be provided at the 80% AMI income tier, and one-third (1/3) of the WDUs will be provided at the 100% AMI income tier. The 120% and 60% AMI income tiers of the Adopted WDU Guidelines shall not be required for the For-Sale WDUs on Block D. The number of For-Sale WDUs shall be equally distributed among the three income tiers to the extent possible based on the number of required WDUs located on Block D with the Applicant determining the final allocation. For example, if a total of nineteen (19) For-Sale WDUs are required, the distribution may be seven (7) units provided at the 70% AMI income tier, six (6) units provided at the 80% AMI income tier, and six (6) units provided at the 100% AMI income tier.
 - ii. Strict bedroom proportionality between For-Sale WDUs and market rate units shall not be required. The Applicant may select the WDU type and size as long as the For-Sale WDUs provided meet or exceed the minimum size for the unit type as permitted by the Adopted WDU Guidelines. ~~A minimum of two (2) two~~The For-Sale WDUs shall be comprised of up to 50% efficiencies, approximately 40% one bedroom units~~or one bedroom, and a minimum of 10% two bedroom or one bedroom/den units shall be provided.~~(e.g. a minimum of 2 units).
 - iii. The location of the For-Sale WDUs in the building shall be selected by the Applicant within its sole discretion but shall be distributed over several floors.

- iv. The pricing of the For-Sale WDUs shall be consistent with Unit Pricing for High Rise Condominium Buildings dated January 16, 2015 established by the County Executive, as may be increased in accordance with semi-annual updating by the Department of Housing and Community Development ("HCD") as approved by the County Executive. Should the unit pricing decrease to accommodate interest rates or similar financial circumstances, the income tiers stated herein shall be adjusted to maintain pricing consistent with the pricing dated January 16, 2015.
- v. The issuance of RUPs for the market rate residential dwelling units shall not be restricted based on the issuance of RUPs for the For-Sale WDUs.
- vi. Until the later to occur of (i) six (6) months after the issuance of the first RUP for a For-Sale WDU on Block D, or (ii) the date at which fifty-five percent (55%) of the market rate units on Block D have been sold and/or are under binding contracts of sale to purchasers of individual units, the Applicant, jointly with HCD, shall market the For-Sale WDUs to qualified purchasers at the income tiers specified above. The marketing of such For-Sale WDUs shall be in accordance with the marketing plan attached to these Proffers as **Exhibit A**.
- vii. After the marketing period described in paragraph A.vi., any unsold For-Sale WDUs, may be marketed and conveyed by the Applicant at current comparable market prices to the public for a similarly sized and finished unit. Prior to the issuance of a RUP for any unsold For-Sale WDU that is sold by the Applicant at current comparable market prices pursuant to this proffer, the Applicant shall contribute to the Fairfax County Housing Trust Fund the difference between the For-Sale WDU pricing and the market sales price less the Applicant's costs associated with continued ownership and sale from the expiration of the marketing period described in paragraph A.vi. Costs shall include taxes, mortgage interest, sales costs, marketing expenses, condominium fees, closing costs, and other costs as reasonably demonstrated to HCD, and all covenants and restrictions shall be released also as described in paragraph A.viii. below. Such contribution shall be calculated based on a sales price that is a minimum of 65% of the appraised market value of the For-Sale WDU as demonstrated to HCD.
- viii. Prior to the marketing of any unsold For-Sale WDUs, the Applicant, with the joinder of HCD, shall release all For-Sale WDU covenants and restrictions, including site plan restrictions, as recorded against the unit or units that are released.

- ix. Within thirty (30) days of accepting a contract for the purchase of a For-Sale WDU, the Applicant shall submit to HCD an income certification form, consistent with the form attached hereto as **Exhibit B**, completed by the contract purchaser.

- B. As an alternative to the provision of For-Sale WDUs on Block D, **as described in Paragraph A**, the Applicant shall make a contribution to the Board or its designee to establish a fund to promote affordable housing in Tysons to be known as the Tysons Affordable Housing Trust Fund (the "Fund"). Said contribution shall be made as follows:
 - i. One-half of one percent of the net base sales price of the market rate units shall be contributed to the Fund (the "Initial Contribution") in accordance with the following:
 - a. At time of site plan submission, the Applicant shall provide an estimate of the base sales price of the market rate dwelling units to be constructed on Block D. At time of site plan approval, one-half of the Initial Contribution, based on the estimated base sales price, shall be paid to the Board by the Applicant to establish the Fund.
 - b. Prior to the issuance of the final RUP on Block D, the Applicant shall deposit the remainder of the Initial Contribution into the Fund. Such remainder shall be calculated based on the actual base sales price of the market rate residential units net of brokerage fees, prorated taxes, transfer and recordation fees, and any upgrades to the base unit. Said calculation shall be submitted for review by HCD at the time of payment. **By way of example, if 110 market rate dwelling units are constructed on Block D with an average base sales price of \$800,000.00 per unit, the Initial Contribution would be \$440,000.00.**
 - ii. An additional contribution of one percent of the net base sales price of the market rate units shall be made to the Fund (the "Additional Contribution") in accordance with the following:
 - a. Four (4) installments shall be made as follows: at the issuance of the RUP for the dwelling unit representing 25% of the total units constructed on Block D; at the issuance of the RUP for the dwelling unit representing 50% of the total units constructed on Block D; at the issuance of the RUP for the dwelling unit representing 75% of the total units constructed on Block D; and the final RUP.

- b. Each installment of the Additional Contribution shall be calculated based on the actual base sales price of the market rate residential units sold net of brokerage fees, pro-rated taxes, transfer and recordation fees, and any upgrades to the base unit. Said calculation shall be submitted for review by HCD at the time of payment. By way of example, if 110 market rate dwelling units are constructed on Block D with an average base sales price of \$800,000.00 per unit, the Additional Contribution would be \$880,000.00. (In the example, the combined Initial Contribution and Additional Contribution would be \$1,320,000.00)
- iii. Notwithstanding the actual base sales price ultimately used to calculate the Initial Contribution and the Additional Contribution pursuant to paragraphs 92.2.B.i. and 92.2.B.ii, the combined total of the Initial Contribution and the Additional Contribution shall be at least \$1,000,000.00. To the extent necessary, the final installment of the Additional Contribution described above shall include the amount required to result in a combined total of at least \$1,000,000.00.
- iiiv. Notwithstanding any depictions on the CDPA, should the alternative described in this Proffer 92.2.B. be selected, the residential building on Block D shall be developed with a maximum of an additional 16% of GFA above the base development and a maximum building height of 285 feet as detailed in Table 5 on Sheet C2.1 of the CDPA.
- C. Notwithstanding the foregoing, ~~should the Board's policies related to WDUs in Tysons Corner be amended~~, the Applicant reserves the right, in its sole discretion as to its respective Block, to opt into the new or existing policies related to WDUs in Tysons Corner, in part or in whole, without the need for a PCA or CDPA and, if the Applicant so opts into any such new or existing policies, the provisions of this Proffer ~~which~~ that relate to the ~~new~~ policies of the Board that the Applicant has elected to opt into shall no longer be effective. Furthermore, the Applicant reserves the right as to its respective Block to enter into a separate binding written agreement with the appropriate County agency as to the terms and conditions of the administration of the For-Sale WDUs. Such an agreement shall be on terms mutually acceptable to the Applicant and the County and may occur any time after the approval of this Application. Neither the Board nor the County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the For-Sale WDUs shall be administered solely in accordance with such agreement and the provisions of this Proffer as it applies to For-Sale WDUs shall become null and void. Such an agreement and any

modifications thereto, or an appropriate memorandum thereof, shall be recorded in the land records of the County.

Existing Proffer 93 amended as to the Block D Subject Property to delete references to "hotel" use as follows:

93. Office Contributions toward Affordable/Workforce Housing in Tysons Corner. One of the following two options may be chosen by the Applicant for non-residential uses' contributions toward the provision of affordable and/or workforce housing within Tysons Corner. This contribution shall be made to the Board, be deposited in a specific fund to be used solely for this purpose within Tysons Corner and shall be payable prior to the issuance of the initial Non-RUP for each new non-residential building on each respective Block, excluding retail/services uses and public uses. The contributions shall consist of either (i) a one-time contribution of \$3.00 for each square foot of office GFA, excluding retail/services uses and public uses, or (ii) an annual contribution of \$0.25 for each square foot of non-residential GFA, excluding retail/services uses and public uses and continuing for a total of sixteen (16) years.

STORMWATER MANAGEMENT

Reaffirm Existing Proffer 94, which shall remain unchanged.

INTERIOR NOISE ATTENUATION FOR RESIDENTIAL AND HOTEL USES

Reaffirm Proffer 95, which shall remain unchanged.

EQC, RPA AND TREE PRESERVATION WITHIN SUB-BLOCK A-1

Existing Proffers 96-105 do not relate to Block D.

MISCELLANEOUS

Reaffirm Existing Proffers 106 – 109, which shall remain unchanged.

Existing Proffer 110 amended as to the Block D Subject Property as follows:

110. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty (60) days prior to recording any condominium documents that would change the use of the buildings on the Block D Subject Property from a multi-unit residential real property that is primarily leased or rented to residential tenants or other occupants by an owner who is engaged in such a business, which is taxable for purposes of the now existing Phase I Dulles Rail Transportation Improvement District (the "Phase I District"), to a use that is not subject to the Phase I District tax, the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County

Department of Tax Administration advising that the Applicant intends to record such condominium documents for the Block D Subject Property. Prior to recording such condominium documents, the Applicant shall pay to the County a sum equal to the then-present value of Phase I District taxes, based on the use of the Block D Subject Property prior to becoming subject to the condominium, that will be lost as a result of recording such condominium documents and in accordance with a formula approved by the Board.

Reaffirm Existing Proffers 111-114, which shall remain unchanged.

Additional, new proffers for the Block D Subject Property:

115. Emergency Vehicle Preemption (EVP) Devices. Prior to issuance of the final RUP for the building on Block D, the Applicant shall contribute \$20,000.00 to the Capital Project titled Traffic Light Preemptive Devices – FRD Proffers in Fund 300-C30070, Public Safety Construction for use in the installation of preemptive signal devices on traffic signals along the primary travel route to the closest fire station. The Applicant shall have no responsibility for installation or maintenance of the preemptive signal devices.

[SIGNATURES ON FOLLOWING PAGE]

APPLICANT:

CITYLINE PARTNERS LLC
Applicant and Agent for Title Owners

By: _____
Name: _____
Title: _____

OWNER:

GRAYSON 7913 WESTPARK LLC
Title Owner of a portion of Parcel 29-4-((7))-2

By: _____
Name: _____
Title: _____

OWNER:

CAMPBELL-SCOTT WESTPARK LLC
Title Owner of a portion of Parcel 29-4-((7))-2

By: _____
Name: _____
Title: _____

CONTRACT PURCHASER:

RENAISSANCE CENTRO TYSONS, LLC

By: _____
Name: _____
Title: _____

Summary report:	
Litéra® Change-Pro TDC 7.5.0.166 Document comparison done on 01/13/2016 10:05:04 AM	
Style name: H&W Standard	
Intelligent Table Comparison: Active	
Original DMS: iw://EMF_US/HW_US/54175584/13	
Modified DMS: iw://EMF_US/HW_US/54175584/15	
Changes:	
<u>Add</u>	25
Delete	19
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	44



County of Fairfax, Virginia

To: Suzanne Wright, Zoning Evaluation Division (ZED), DPZ

From: Charlene Fuhrman-Schulz, Design, Affordable Dwelling Unit Project Administrator, HCD

CC: Fairfax County “WDU Proffer Team”

Date: **January 27, 2016**

RE: **Arbor Row – Revised Response to Applicant’s Proposed WDU Proffer Revisions**

The Fairfax County Department of Housing and Community Development (“HCD”) offers the following comments on the proposed Proffer Condition Amendment 2011-PR-023 pertaining to Arbor Row, Block D, and dated December 30, 2015 (“application” or “draft proffer”). For the reasons set forth below, HCD does not support this application as it will not provide affordable or workforce housing in accordance with the terms of the Comprehensive Plan and the County’s Tysons Corner Urban Center Workforce Dwelling Unit (“WDU”) Administrative Policy Guidelines (“Tysons WDU Guidelines”).

1. Options to Buy-Out of WDU Commitment – The draft proffer provides two different buyout mechanisms through which the applicant could contribute cash to the County instead of providing some or all of the proffered WDUs. As noted in the Area Plan for the Tysons Corner Urban Center (“Area Plan”), which is a part of the Comprehensive Plan, a cash contribution in lieu of providing WDUs “is not desired” which is consistent with the County’s affordable housing programs which began in the early 1990’s. The preference for units in lieu of cash is directly linked with the need for affordable housing to serve low and moderate income households in this location to include both rental and home ownership opportunities. There are a number of reasons for this. Even if the cash contribution is of a theoretically sufficient amount to replace the WDUs that the applicant would no longer provide, the County may or may not be able to use that money to acquire an equivalent number of units within the same area.

2. Buy Out Options – The Area Plan calls for 20% of residential units to be provided as WDUs. For the subject property, if built to its maximum permitted density, this would yield approximately 20 WDUs. Based on the WDU Policy, pricing of WDUs was developed with input from industry, approved by the County Executive and published in early 2015. The established pricing was developed such that WDUs in high rise construction would be affordable to households with incomes ranging from 60% to 120% AMI, adjusted based on unit size and household size. In addition, an analysis was conducted that compared the aggregate of the sales prices with the average cost of

residential high-rise construction. The analysis showed that the aggregate of the sales prices offset the estimated average cost of high-rise residential construction for these units.

The straight buyout mechanism proposed by the applicant, as amended in their January 13, 2016 proffers, would only yield enough cash to acquire 3-5 units in the Tysons area which falls short of the Area Plan policy to provide 20% of all new residential units as WDUs. This is particularly so given that the developer has proposed receiving a density bonus calculated on the basis of providing WDUs.

Under the straight buyout mechanism, the applicant proposes to pay a total of 1.5% of the sales price – net of certain costs – of all residential units on Block D, over time, as a cash contribution, with a guaranteed minimum contribution of \$1,000,000. The County would only be able to buy a handful of residential units in Tysons with such an amount, far fewer than the approximately 20 that the Comprehensive Plan would call for here. Further the applicant proposes that the 1.5% be applied to sales prices after netting out certain costs, which are generally undefined. For example, costs pertaining to "upgrades to the base unit" are to be netted out. It is unclear, however, how a "base unit" is defined, who decides what that definition is, and why upgrades to any such base unit (presumably made at the election of the applicant) should come at the expense of affordable housing. Irrespective of these issues surrounding the actual calculation of the cash contribution as proposed by the applicant, the result is a disparity between what the draft proffer would provide and what the Comprehensive Plan calls for (i.e., 20% of all new residential units to be affordable).

The applicant's other, alternative buyout mechanism is similarly problematic. Under the draft proffer, even if the applicant does not exercise the straight buyout of its entire WDU commitment at or before site plan submission, it also would have the ability to buy out of its obligation with respect to any WDUs that remain unsold after a specified (and unreasonably short – see bullet # 3, below) period of time. The proposed formula here would be to start with 65% of the appraised value of the unit (at market rates), back out various costs, deduct the WDU program sales price, and then pay the difference to the County. As with the straight buyout, this formula is similarly likely to yield an amount insufficient to replace the lost WDU and would be insufficient to meet the workforce housing goals of the Comprehensive Plan.

3. Alternative Buyout Timing Mechanics – As described above, the draft proffer allows the applicant to buy out of any WDUs that remain unsold after a certain period of time. The period of time, however, is based on certain occurrences, which could result in an unreasonably short sales window. The draft proffer provides that the applicant can treat a WDU as unsold and thus buy out of it after the later of (a) 6 months after the issuance of the first RUP for a WDU and (b) the date on which 55% of the market rate units are under contract. The latter provision is unlikely to be of any effect, since the developer is free to start selling market rate units before it starts selling WDUs. As for the former provision, HCD believes that six months is an unreasonably short period of time, particularly since there is no requirement that the applicant have finished

construction on more than one WDU by the start of such period and since the consequences of an unsold unit are drastic (i.e., the insufficient buyout described above).

4. Proposed Timing of Straight Buyout Would Arguably Violate Virginia Law – According to Virginia Code § 15.2-2303.1:1(A), cash proffers for housing made on a per-unit basis can only be collected by the County after final inspection of the applicable unit and before issuance of the RUP for that unit. In its straight buyout mechanism proposal – the one where the applicant proposes to pay a total of 1.5% of the sales prices of all of its units, less certain costs – such a contribution likely constitutes a “per unit” cash proffer, because the formula for calculating the amount of the payment depends on the sales price of each unit. The applicant, however, proposes to pay a portion of the buyout at site plan submission, which would be in violation of above-referenced statute.

5. Recognition of Tysons WDU Guidelines – The Comprehensive Plan provides that administration of the WDU program shall be in accordance with County guidelines. For the Tysons area, these are the Tysons WDU Guidelines. The draft proffer omits any reference to the Tysons WDU Guidelines.

6. Failure to Commit to Sell WDUs – The Tysons WDU Guidelines provide that RUPs shall not be issued for more than 75% of the total number of units in a development until RUPs have been issued for at least 75% of the WDUs in the development. This requirement ensures that the WDUs are not pushed off until the end of a project, or indefinitely. The draft proffer does not include this requirement. Rather, it expressly provides that RUPs for market rate units shall not be restricted on the basis of RUPs for WDUs.

7. Omission of County’s Right to Acquire a Portion of WDUs – Under the Tysons WDU Guidelines, the County has the right to itself acquire one-third of the for-sale WDUs produced by a project. The draft proffer fails to provide the County with this right.

8. Unacceptable Mix of Unit Types – The Area Plan calls for the mix of WDU unit types – that is, the number of bedrooms – to be similar to that of the mix of the unit types for the market rate units in the building. For example, if the building as a whole is one-third studios, one-third 1-bedrooms, and one-third 2-bedrooms, then the WDUs in the building should be comprised of a similar unit mix. The draft proffer, by contrast, states that the applicant may provide a mix however it deems appropriate, except that it has to provide at least two units that are 2-bedrooms or 1-bedrooms with a den. In practice, this means that the applicant would be free to provide all studios and two 1-bedrooms-with-dens, regardless of the mix of the remainder of the building.

9. Action Regarding Hypothetical New WDU Policy – The draft proffer provides that if the County in the future establishes a new WDU Policy, then the Applicant may elect to opt into such new policy “in whole or in part.” Each policy, of course, comes with its own set of tradeoffs; an applicant should not be able to unilaterally pick the most advantageous parts of each.

10. The draft proffer allows the applicant to retain a significant portion, if not all, of the increased density and intensity of uses that it received as part of its prior land use approvals. Hence, as drafted, the draft proffer would permit the applicant to enjoy a density bonus without providing any meaningful workforce housing. This is not consistent with the BOS Tysons Corner WDU Guidelines.